

4. First, attention of the Examiner is directed first to claim 1. The words "heat" and "nuclear" were only added after the Examiner demanded it in his previous Communication, and they are --in fact-- exactly consistent with the Examiner's very own comment where he said what this invention involved. The entire original specification and claims involved heat and heat removal and the like.

THE EXAMINER'S DEMAND FOR THE CHANGE:

"Claims 1, 10 and 21 are vague, indefinite and incomplete as to what is actually the product. (Note this specific rejection that applied to previous claims 1-14 was not addressed in Applicant's response to the previous Office Action)."

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

To comply pursuant to the Examiner's demand, Claim 1 was amended in the Applicant's previous response of March 24, 2003, as follows:

1. (Amended) In a process for producing heat or a nuclear product using a material loaded with an isotopic fuel, a method to control the production of said product which includes in combination:
 applying an electric field to load said isotopic fuel to said material,
 loading said isotopic fuel into said material,
 applying a second electric field in a non-parallel direction to the first applied electric fields,
 producing redistribution of said isotopic fuel within said loaded metal,
 thereby controlling the product produced.

The change was minor, was in response to the Examiner (supra), and involved NO NEW MATERIAL and is consistent with Examiner's own statement in his previous Communication to Applicant dated 2/3/03.

THE EXAMINER'S STATEMENT PROVING THIS IS NOT NEW MATERIAL

"In the current application the Applicant does not define the products of the claimed process and apparatus....the only possible "products" that can be formed in the claimed invention are nuclear fusion products. "

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

Therefore, given the Examiner's own statement (supra), and the original specification and claims consistent with this very material, and the entire previous docket with Examiner Wasil discussing this material, and the submitted Declarations discussing this material, truthfulness, and the normal standards of review, demand that this not be regarded as new material. For the Examiner to call "heat" and "nuclear" products "new" i) AFTER HE DEMANDED IT and ii) when they are both in the original specification and claims, is --with all due respect-- disingenuous.

5. Next, attention of the Examiner is directed to claim 5. The word "said" replaced the word "the" after the Examiner demanded it in his previous Communication.

THE EXAMINER'S DEMAND FOR THE CHANGE:

"Claims 5 and 22 recite The limitation 'the group'. There is insufficient antecedent basis for this limitation in the claims."

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

To comply pursuant to the Examiner's demand, Claim 5 was amended in the Applicant's previous response of March 24, 2003, as follows:
Claim 5 has been amended as follows:

5. (Amended) In a method as in claim 1, where said ~~the~~ isotopic fuel is a member of the group consisting of an isotope of hydrogen, boron, lithium, or potassium.

The change was minor, and was in response to the Examiner (supra), and involved NO NEW MATERIAL.

6. Next, attention of the Examiner is directed to claim 10. The words "heat" and "nuclear" were only added after the Examiner demanded it in his previous Communication, and they are --in fact-- exactly consistent with the Examiner's very own comment where he said what this invention involved. The entire original specification and claims involved heat and heat removal and the like.

THE EXAMINER'S DEMAND FOR THE CHANGE:

"Claims 1, 10 and 21 are vague, indefinite and incomplete as to what is actually the product. (Note this specific rejection that applied to previous claims 1-14 was not addressed in Applicant's response to the previous Office Action).

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

To comply pursuant to the Examiner's demand, Claim 10 was amended in the Applicant's previous response of March 24, 2003, as follows:

10. (Amended) In a process for producing heat or a nuclear product using a material by a reaction, a method to control the redistribution of isotopic fuel loaded into said material which includes in combination:
applying an electric field to load said isotopic fuel into said material,
applying a second electric field to said material loaded with said isotopic fuel,
thereby effecting redistribution of said isotopic fuel.

The change was minor, was in response to the Examiner (supra), and involved NO NEW MATERIAL and is consistent with Examiner's own statement in his previous Communication to Applicant dated 2/3/03.

THE EXAMINER'S STATEMENT PROVING THIS IS NOT NEW MATERIAL

"In the current application the Applicant does not define the products of the claimed process and apparatus....the only possible "products" that can be formed in the claimed invention are nuclear fusion products. "

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

Therefore, given the Examiner's own statement (supra), and the original specification and claims consistent with this very material, and the entire previous docket with Examiner Wasil discussing this material, and the submitted Declarations discussing this material, honesty and the normal standards of review demand that this not be regarded as new material. For the Examiner to call "heat" and "nuclear" products new i) AFTER HE DEMANDED IT and ii) when they are both in the original specification and claims, is --with all due respect-- improper.

7. Next, attention of the Examiner, and if necessary Commissioner and Court, is directed to claim 21. The words "heat" and "nuclear" were only added after the Examiner demanded it in his previous Communication, and they are --in fact-- exactly consistent with the Examiner's very own comment where he said what this invention involved. The entire original specification and claims involved heat and heat removal and the like.

THE EXAMINER'S DEMAND FOR THE CHANGE:

"Claims 1, 10 and 21 are vague, indefinite and incomplete as to what is actually the product. (Note this specific rejection that applied to previous claims 1-14 was not addressed in Applicant's response to the previous Office Action).

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

The Examiner also demanded a clarification to show which of the recited steps produces the isotope redistribution.

THE EXAMINER'S DEMAND FOR THE CHANGE:

"Claim 21 recites in the preamble a method to effect redistribution of said isotope of hydrogen, whereas the body of the claim recites "thereby distributing said isotope of hydrogen within said loaded metal." It is unclear which of the recited steps produces the isotope redistribution."

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

To comply pursuant to the Examiner's demands, Claim 21 was amended in the Applicant's previous response of March 24, 2003, as follows:

Claim 21 has been amended as follows:

21. (Amended) **In a process for producing heat or a nuclear product using a metal loaded with an isotope of hydrogen, a method to effect redistribution of said isotope of hydrogen in said material which includes in combination: applying an electric field to load said isotope of hydrogen into said metal, loading said metal with said isotope of hydrogen, thereafter applying a second electric field in a non-parallel direction to the first applied electric field, to thereby distributeing said isotope of hydrogen within said loaded metal.**

The change was minor, was in response to the Examiner (supra), involved NO NEW MATERIAL and is consistent with Examiner's own statement in his previous Communication to Applicant dated 2/3/03.

THE EXAMINER'S STATEMENT PROVING THIS IS NOT NEW MATERIAL

"In the current application the Applicant does not define the products of the claimed process and apparatus....the only possible "products" that can be formed in the claimed invention are nuclear fusion products. "

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

Therefore, given the Examiner's own statement (supra), and the original specification and claims consistent with this very material, and the entire previous docket with Examiner Wasil discussing this material, and the submitted Declarations discussing this material, honesty and the normal standards of review demand that this not be regarded as new material. For the Examiner to call "heat" and "nuclear" products new i) AFTER HE DEMANDED IT and ii) when they are both in the original specification and claims, is --with all due respect-- egregious.

8. Next, attention of the Examiner, and if necessary Commissioner and Court, is directed to claim 22. The word "said" replaced the word "the" after the Examiner demanded it in his previous Communication.

THE EXAMINER'S DEMAND FOR THE CHANGE:

"Claims 5 and 22 recite The limitation "the group". There is insufficient antecedent basis for this limitation in the claims. "

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

To comply pursuant to the Examiner's demand, Claim 22 was amended in the Applicant's previous response of March 24, 2003, as follows:

Claim 22 has been amended as follows:

22. (Amended) **In a method as in claim 21, where said loaded the material is a member of the group consisting of palladium, titanium, or nickel or their alloys.**

The change was minor, was in response to the Examiner (supra), involved NO NEW MATERIAL.

9. Next, attention of the Examiner, and if necessary Commissioner and Court, is directed to claims 24, 26, and 28. The word "stopped by" replaced the word "impact" after the Examiner demanded it in his previous Communication.

THE EXAMINER'S DEMAND FOR THE CHANGE:

"New claims 24, 26 and 28 recite the limitation of "having said redistribution of said isotopic fuel impact a barrier impermeable to said isotopic fuel." There is neither a written description nor an enabling disclosure of: a) what exactly is meant by the term, "impact"; by how and in what manner such redistribution causes the so-called impact a fuel-impenetrable barrier"

[Examiner Palabrica, previous Communication to Applicant, 2/3/03]

To comply pursuant to the Examiner's demand, Claims 24, 26, and 28 were amended in the Applicant's previous response of March 24, 2003, as follows:

24.(Amended) In a method as in claim 21, where the additional step is taken of having said redistribution of said isotopic fuel stopped by ~~impact~~ a barrier impermeable to said isotopic fuel.

Claim 26 has been amended as follows:

26.(Amended) In a method as in claim 1, where the additional step is taken of having said redistribution of said isotopic fuel stopped by ~~impact~~ a barrier impermeable to said isotopic fuel.

Claim 28 has been amended as follows:

28. (Amended) In a method as in claim 10, where the additional step is taken of having said redistribution of said isotopic fuel stopped by ~~impact~~ a barrier impermeable to said isotopic fuel.

The changes were minor, were in response to the Examiner (supra), and involved NO NEW MATERIAL. What does the Office want the Applicant to do? Such behavior by the Examiner, in the light of the Office failing to enforce standards of review and accountability, are probably not appropriate for the Office or any other Federal agency. To the contrary, assistance of, and help for, a citizen of the USA would be more appropriate.

10. On page 7 of the previous Communication from the Applicant to the Examiner, Applicant said,

"The applicant thanks the Examiner very much for these comments. Each of these are now corrected pursuant to the Examiner's comments."

There has been compliance by the Applicant.

On page 9 of the previous Communication from the Applicant to the Examiner, Applicant said,

"18. In summary, there IS definiteness because acceptability of the claim language depends on whether one of ordinary skill-in-the-art would understand what is claimed, and that is confirmed by the light of the specification, the Declarations, the Amicus Briefs, and the peer-reviewed publications [Ex parte Porter, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992)]. The Examiner has not responded to the fact that 35 U.S.C. 112, second paragraph requires the Examiner had to provide reasons why the terms in the claims and/or scope of the invention are unclear "in a positive and constructive way, so that minor problems can be identified and easily corrected, and so that the major effort is expended on more substantive issues."

There has not been compliance by the Examiner.

11. On pages 109-110 of the previous Communication from the Applicant to the Examiner, Applicant said,

"If this application is not allowed, and the Examiner continues to disagree with the numerous Affiants and peer-reviewed published papers, then the Applicant hereby formally requests explicitly that the Examiner respond in full with specificity as to the reason to facilitate Appeal, with the Examiner making clear on the record with precision which of these submitted averments by each Declarant regarding operability and utility were formally considered, and if the Examiner disputes them, exactly how he reached his conclusion, and why by substantive and adequate explanation how the Declarations failed to overcome the *prima facie* case initially established by the Examiner."

There has not been compliance by the Examiner.

12. The Amendments added no new matter.

The Examiner should explain his disingenuous statement that there is new matter, or should help the Applicant. This is because on page 109 of the previous Communication from the Applicant to the Examiner, Applicant said,

"If, for any reason the claims of this application are not believed to be in full condition for allowance, the applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims [pursuant to MPEP 707.07(j)] or in making constructive suggestions [pursuant to MPEP 706.03(d)] in order that this application can be placed in allowable condition as soon as possible and without the need for further proceedings. Applicant notes that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)]. "

WHEREFORE for the above reasons, the Applicant respectfully requests reconsideration and reversal of the Examiner's allegation of purported new material in Claims 1, 5, 10 21, 22, 24, 26, and 28, or a substantive, precise and complete explanation from the Examiner of exactly what was "new" in the minor changes which were made in response to the Examiner's requests and which contained identical material to that within the original specification of the above-entitled application, as is just and reasonable.

Very respectfully submitted,



Mitchell R. Swartz, ScD, MD, EE
Weston, MA

Certificate Of Mailing [37 CFR 1.8(a)]

April 19, 2003

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
"The Commissioner of Patents and Trademarks
Washington, D.C. 20231" on the date below.
Thank you.

Sincerely,

April 19, 2003



M.R. Swartz